

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Revision of Procedures Governing)	
Amendments to FM Table of Allotments and)	MB Docket No. 05-210
Changes Of Community of License in the)	RM - 10960
Radio Broadcast Services)	

To: Office of the Secretary

REPLY COMMENTS

Apex Broadcasting, Inc., Alexander Broadcasting Company, Inc., Charles M. Anderson & Associates, Cumulus Licensing LLC, Great South RFDC, LLC, Hunt Broadcasting, Inc., Marathon Media Group, LLC, Media Services Group, Multicultural Radio Broadcasting Licensing, LLC, Spanish Peaks Broadcasting, Inc., and Wagon Wheel Broadcasting, LLC (collectively, the “Parties”) by their counsel, hereby submit their Reply Comments in the above captioned proceeding. *See Notice of Proposed Rule Making*, 70 Fed. Reg. 44537 (2005) (*NPRM*).

I. The Commission Should Adopt its Proposals to Improve its Procedures for Changing Community of License.

1. The two primary proposals set forth in the *NPRM* to improve the Commission’s procedures with regard to changing the communities of license of FM and AM stations – allowing community changes by application and imposing filing fees on proposals for a new community – enjoy widespread support. There is no doubt that the Commission’s procedures are badly in need of improvement. As many commenters point out, the processing time for FM community modifications is measured in years, and the time between opportunities for AM community modifications is even longer. The Minority Media and Telecommunications Council (“MMTC”) notes that “these processing delays deter investment in the radio industry and

discourage bona fide proponents from attempting to improve radio service to the public.” Comments of MMTC at 8. *See also* Comments of Starboard Media Foundation, Inc. (“Starboard”) at 2 (noting particular disincentives to pursue AM modifications).

2. A broad spectrum of industry participants, including small and large broadcasters, broadcast investors, media brokers, and broadcast engineers, support the Commission’s proposal to permit AM and FM community of license changes by minor modification application. *See, e.g.,* Comments of Keymarket Licenses, LLC, et al.; Comments of Cox Radio, Inc. (“Cox”); Comments of Arlington Capital Partners, L.P., et al.; Comments of American Media Services, LLC, et al.; Comments of Graham Brock. Inc. This change to the Commission’s procedures would help streamline community changes and contribute to efficient spectrum management. The same commenters uniformly support the Commission’s proposal to impose a filing fee on each community change through the filing of a Form 301 application for the change. This proposal would also streamline the Commission’s processes by deterring speculative filings and ensuring that proponents have a sincere interest in constructing the new facilities.

3. The opposition to these proposals is largely misplaced. Opponents are concerned that the streamlining efforts will somehow facilitate the movement of radio stations from underserved rural areas to well-served urban areas. *See, e.g.,* Comments of New World Radio, Inc. at 3. This is not the case. The changes discussed above are purely procedural. They are designed to accelerate only those spectrum modifications that are already permissible – and even encouraged – under the Commission’s substantive rules and policies. The Commission has clearly articulated and extensively documented rules in place to discourage the wholesale rural-to-urban migration of broadcast facilities. Those rules would continue to operate under the streamlined procedures. Moreover, as New Star Broadcasting eloquently states regarding its

small-town station, “[s]tations this small don’t want to move in to urbanized areas, just move where they can be supported economically.” Comments of New Star Broadcasting at 2.

4. As several commenters point out, the change to application procedures would eliminate counterproposals in favor of a first-come, first-served priority. *See, e.g.*, Comments of Cox at 2-3. However, as the Commission has warned on several occasions, parties should not wait until the last minute to file a counterproposal. They should file at the earliest possible time in order to minimize the risk of being precluded. *See, e.g., Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments*, 8 FCC Rcd 4743 (1993). The Commission cannot afford the luxury of the counterproposal system when the price of that luxury is to delay the introduction of new and improved service.

5. Several commenters are concerned that the procedures for notifying licensees of involuntary changes would be relaxed. *See, e.g.*, Comments of Clear Channel Communications, Inc. at 3-4. This concern is similarly misplaced. The Commission’s obligations regarding the notification of affected licensees are statutory. *See* 47 U.S.C. § 316; and 47 C.F.R. § 1.87. Therefore, the Commission could not abrogate the notice and opportunity for comment afforded to those who are subject to involuntary modifications of their licenses, even if that were among the proposals set forth in the Notice of Proposed Rule Making, which it was not.

6. Accordingly, the Commission should adopt its proposal to permit AM and FM community of license changes by minor change applications, and its proposal to require a filing fee for a petition for rule making for a new community of license. It should also lift the current limit of four contingent applications in Section 73.3517(e) of the Commission’s Rules. It should do so because the Commission’s rules should promote the “fair, efficient, and equitable distribution of radio service” to the various communities pursuant to Section 307(b), and not merely serve administrative convenience. Because of the maturity of the FM spectrum, it is

common that a beneficial change to one station must involve a number of other stations in the process. Allowing FM community changes by application without raising the limit on contingent applications would confer very little advantage, as most proposals would have to be filed by rule making just as they are today. *See* Comments of Brantley Broadcasting Associates, LLC at 7; Cox comments at 4-6. Moreover, as Cox points out, complex proposals are rare (due to their complexity), and in any event, parties who have succeeded in negotiating a complex proposal would have an incentive to work around any limit that was imposed by breaking up the proposal into a number of component parts, effectively increasing the Commission's workload. Cox comments at 5-6. Thus, any limit would be counterproductive.

7. These principles lead even more strongly to the conclusion that the Commission should not adopt its ill-considered proposal to impose a new limit on the number of changes that may be proposed in one rule making proceeding. This proposal does not enjoy the support of the broadcast community. It would clearly contravene the Commission's mandate under Section 307(b). And, as the Parties demonstrated in their Comments, on average there are only three filings per year that involve more than five changes to the FM Table of Allotments. The gain is not worth the cost.

II. Specific Proposals Raised in Comments.

8. KM Communications, Inc. ("KM"), proposes that the Commission limit the ability of an AM auction participant to change its community of license once it has been awarded a dispositive Section 307(b) preference. Comments of KM at 4. However, such a limitation is unnecessary. KM is concerned that an applicant could choose a community for purely strategic reasons and then abandon that community once it has served its purpose. However, a licensee requesting a change in community of license must demonstrate that the new community is superior to the old community under the Commission's allocation priorities. *See Amendment of*

the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

This requirement would be maintained under the streamlined application procedures. Therefore, if an AM applicant were to succeed in changing its community of license after being awarded a Section 307(b) preference, the new community would have to have been demonstrably superior to the old community. Thus, the applicant would have been awarded the same preference if it had specified the new community in the first place.

9. Educational Media Foundation (“EMF”) proposes that the opportunity to make community of license changes by minor modification application be extended to noncommercial educational (“NCE”) licensees. *See also* Comments of Starboard at 3-4. Baybridge Communications, LLC (“Baybridge”) proposes that the same opportunity be extended to AM expanded band licensees as well. Both of these proposals have merit and are necessary in order for the Commission to fulfill its Section 307(b) mandate. The AM expanded band was allocated to relieve interference and congestion in the AM band. There is no reason why licensees in this band should not be treated the same as those in the lower band. Should the Commission determine that the NCE proposal is beyond the scope of this proceeding, it should promptly institute another proceeding to adopt the same streamlining changes for NCE stations.

10. Several commenters appear to view this proceeding as a catch-all into which they can throw any substantive changes that might be on their minds. *See, e.g.*, comments of REC Networks at 4-7; comments of Charles Crawford. However, it is worth pointing out that the title of this proceeding is “Revision of *Procedures* ...” Substantive changes, such as revisions to the Commission’s *Tuck* policy, are not properly within the scope of this proceeding. The Administrative Procedure Act requires that the Commission give the public adequate notice of proposed changes to its rules. *See United Steelworkers of America v. Marshall*, 208 U.S. App.

D.C. 60, 647 F.2d 1189, 1221 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913, 101 S. Ct. 3148, 69 L. Ed. 2d 997 (1981) (enunciating “logical outgrowth” test). For the Commission to make changes to its *Tuck* policy in this proceeding would contravene those basic procedural safeguards.

WHEREFORE, for the foregoing reasons, the Commission should adopt its proposal to permit AM and FM community of license changes by minor modification and extend that permission to AM expanded band and FM NCE stations. It should require that an application and filing fee accompany any petition for a new community of license. Finally, it should eliminate any requirement on the number of contingent applications that may be filed in a group, and it should not limit the number of changes that may be proposed in a rule making proceeding.

Respectfully submitted,

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